

PUBLIC VERSION

COMMENTS ON BEHALF OF ISPAT MEXICANA, S.A. de C.V.

Regarding the Section 232 Investigation of Imports of Iron Ore and Semi-Finished Steel

Cameron & Hornbostel LLP presents the following comments on behalf of Ispat Mexicana, S.A. de C.V. in response to the U.S. Department of Commerce's February 6, 2001 "Notice of initiation of national security investigation and request for public comments."¹

Introduction

Ispat Mexicana produces and exports semi-finished steel slabs from Mexico to the United States. As an interested party to the investigation, Ispat Mexicana submits the following information to demonstrate that U.S. imports of semi-finished steel slabs from Mexico not only do not threaten U.S. national security, any restrictions on such imports would in fact harm U.S. economic welfare, and thus harm national security.

The Department has initiated the present investigation under section 232 of the Trade Expansion Act of 1962, as amended.² The investigation seeks "to determine the effects on the national security of imports of iron ore and semi-finished steel."³ In its notice of initiation, the Department invited interested parties "to submit written comments, opinions, data, information

¹ 66 *Fed. Reg.* 9067, February 6, 2001.

² 19 U.S.C. § 1862.

³ "Initiation of National Security Investigation of Imports of Iron Ore and Semi-Finished Steel," Department of Commerce, Bureau of Export Administration, Office of Strategic Industries and Economic Security, Strategic Analysis Division, 66 *Fed. Reg.* 9067 (February 6, 2001).

or advice relative to the investigation,” noting the Department’s particular interest in “comments and information directed to the criteria listed in § 705.4 of the regulations as they affect national security.”⁴

Although neither the Trade Expansion Act nor the regulations contain a definition of “national security,” § 705.4(a) lists the following relevant considerations, each relating to national defense requirements:

- (1) Domestic production needed for projected national defense requirements;
- (2) The capacity of domestic industries to meet projected national defense requirements;
- (3) The existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other supplies and services essential to the national defense; [and]
- (4) The growth requirements of domestic industries to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth[.]⁵

In applying these criteria, the critical fact is that the U.S. military has minimal needs for steel. According to the American Iron and Steel Institute, the net total amount of carbon steel products shipped in the United States in the year 2000 for “ordnance and other military” purposes equaled only 5,215 net tons, which constitutes approximately .005% of U.S. steel shipments for that year.⁶ Moreover, the United States does not stockpile steel, which has not been designated

⁴ *Id.* The reference to the regulations is 15 C.F.R. § 705.4.

⁵ These considerations are derived from 19 U.S.C. § 1862(d).

⁶ American Iron and Steel Institute, AIS-16C, “Carbon Steel Product Shipments by
(continued...) ”

one of the “strategic and critical materials” under the Strategic and Critical Materials Stock Piling Act.⁷ And, while the United States maintains strategic reserves of certain resources such as petroleum, it maintains no strategic reserve of steel.

Given the U.S. military’s minimal requirements for steel, the U.S. domestic steel industry’s capacity far exceeds those requirements. Thus, even if it were deemed vital to national security for the United States to have the capacity to meet all national defense requirements through domestic production, there is little risk that the domestic steel industry would be unable to meet those requirements.

However, the Trade Expansion Act and relevant regulations view national security more broadly than military requirements, recognizing the “the close relationship between the strength of our national economy and the capacity of the United States to meet national security requirements.”⁸ Accordingly, § 705.4(b) directs the Department to consider the following:

- (1) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security;
- (2) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; and

⁶(...continued)

Market Classification,” 2000.

⁷ 50 U.S.C. 98 *et seq.* See Department of Defense, Strategic & Critical Materials Report to the Congress, “Operations under the Strategic and Critical Materials Stock Piling Act during the Period October 1999 through September 2000.”

⁸ 15 C.F.R. § 705.4(b). Similarly, the Act “recognize(s) the close relation of the economic welfare of the Nation to our national security . . .” 19 U.S.C. § 1862(d).

(3) Any other relevant factors that are causing or will cause a weakening of our national economy.

As discussed further below, restrictions on U.S. imports of semi-finished steel would actually harm the U.S. economy because imported semi-finished steel is a vital resource in the process through which the U.S. economy meets its needs for the end product, finished steel.

Finished steel is, of course, an essential resource for the nation's economic welfare (and therefore national security), as it is used in key types of heavy construction, oil country tubular goods, automobiles and trucks, and many other products critical to the U.S. economy. Import restrictions would lead to reduced production of finished steel, resulting in lost employment not only in that industry but also in sectors that depend on a steady supply of steel, with a consequent reduction in the real Gross Domestic Product.

For the reasons discussed herein, we respectfully urge the Department to find that U.S. imports of semi-finished steel slabs from Mexico pose no threat to U.S. national security and, if the Department should find otherwise, the Department should recommend against any presidential action imposing restrictions on U.S. imports of semi-finished steel slabs from Mexico.

U.S. Imports of Semi-Finished Steel Slabs from Mexico Do Not Threaten U.S. National Security

Ispat Mexicana is Mexico's largest steel producer and exporter of slab steel. By 1999, Ispat Mexicana had attained an annual slab-production capacity of 3.8 million tons, and the company sells approximately [%] of its slab steel production to the U.S. market. Ispat Mexicana produces a broad variety of grades of slabs used for wide-ranging applications, including automobile and appliance industries, large diameter line pipe grades used primarily in

the petroleum and gas industries, plate grades used in sophisticated applications (such as high-pressure vessels), corrosion-resistant plates for shipbuilding, and structural and commercial grades for the construction industry.⁹

Ispat Mexicana Plays a Vital Role in Supplying the U.S. Steel Industry

Ispat Mexicana's steel-producing facilities are located in Michoacan, Mexico, on the country's West coast. The company's importance to the U.S. steel industry derives largely from its location. Due to the high costs inherent in transporting steel, transportation costs are an extremely important component of steel prices. The least expensive means of transporting steel products is by water. Ispat Mexicana's location on the West coast of Mexico makes it possible for the company to ship semi-finished steel slabs by water to U.S. steel producers located on the Gulf coast and the West coast of the United States. For this reason, Ispat Mexicana's major customers are located on the Gulf and West coasts.

Ispat Mexicana's semi-finished steel slabs are vital to the U.S. steel companies that it supplies, and these companies perform a vital role in the U.S. economy. In fact, within the last ten years, Ispat Mexicana has sold slab to virtually every U.S. steel company, [].

Currently, Ispat Mexicana sells semi-finished steel slabs to U.S. rolling mills, which convert them into finished steel. Rolling mills must buy raw steel to make their finished steel products. For example, []

⁹ See information on Ispat Mexicana S.A.de C.V. at its website-- <http://www.ispat.com>.

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] which is clearly vital to the national economy of the United States.

Ispat Mexicana also sells semi-finished steel slabs to U.S. integrated mills, which either do not produce enough slab for their own operations, or require an outside source of semi-finished steel during periods when their blast furnaces are shut down for relining or maintenance. Inadequate supplies of semi-finished steel would diminish these integrated mills' finished steel output.

The Merchant Supply of U.S. Semi-Finished Steel is Extremely Limited

Continued U.S. imports of semi-finished steel slabs from Mexico are vital to the U.S. steel industry because the U.S. steel industry does not come close to meeting the domestic demand for merchant slab. As explained above, rolling mills, lacking the ability to produce their own semi-finished steel, rely on a steady supply from outside sources. Likewise, as noted, many

¹⁰ [] 2000 Form 10-K 5 (2000).

¹¹ *Id.* at 1.

¹² [] 2000 Form 10-K 405 9 (2000).

own semi-finished steel, rely on a steady supply from outside sources. Likewise, as noted, many U.S. integrated mills cannot always produce sufficient semi-finished steel for their own needs, and rely on purchased semi-finished steel when their furnaces are taken off line for maintenance purposes. However, despite the tremendous domestic demand for semi-finished steel, almost all U.S.-produced semi-finished steel is used internally by its producer, rather than being sold on the merchant market to meet the demand of companies that require an outside supply.¹³ Indeed, we know of no U.S. steel company that is devoted exclusively to the production and sale of semi-finished steel.

Moreover, while a small number of U.S. companies report selling surplus semi-finished steel to the merchant market, few do so on a regular basis.¹⁴ These companies typically seek to sell semi-finished steel when steel demand generally is low and demand for their own finished steel products, therefore, is low. However, the domestic demand for semi-finished steel is highest when steel demand generally is high.¹⁵ Therefore, the few companies that seek to supply the merchant market for semi-finished steel are likely to reduce their supply precisely when domestic demand is highest. Put simply, the domestic U.S. supply of semi-finished steel for the merchant market is not only extremely low, but also unreliable. This tight domestic supply has led inevitably to the need to import semi-finished steel. Current trends do not suggest that the

¹³ Office of Industries, U.S. International Trade Commission, "Industry & Trade Summary--Semifinished Steel," USITC Publication 2758, March 1994, at 3. For example, in the period 1989-91, only about two to three percent of the semi-finished steel produced domestically ever reached the merchant market. *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

domestic supply of semi-finished steel will increase, let alone any time soon. At the present time, there is no significant known new slab-making capacity due to come on line.¹⁶

One major factor limiting the U.S. steel industry's opportunity to increase its production of steel slab for the merchant market is the cost of compliance with environmental regulations.¹⁷ Regulations today affect virtually every stage of the steelmaking process, but they affect primarily the steel melting stage of steelmaking and, thus, the production of semi-finished steel.¹⁸ The cost of operating and maintaining equipment aimed principally at environmental compliance has been estimated at between \$10 and \$20 per ton of shipped steel.¹⁹ The most important air quality legislation affecting steelmakers is the Clean Air Act and its 1990 Amendments, including regulations on coke oven emissions. However, the steel industry is also subject to the Clean Water Act and state water regulations, as well as regulations on the control of solid and hazardous waste under the Resource Conservation and Reclamation Act (RCRA).²⁰

¹⁶ Companhia Vale do Rio Doce, "The Steel and Iron Ore Markets and Major Investments at CVRD" (October 2000) at 2

¹⁷ Office of Industries, U.S. International Trade Commission, "Industry & Trade Summary--Semifinished Steel," USITC Publication 2758, March 1994, at 1, 10-11.

¹⁸ *Id.* at 10.

¹⁹ *Id.*

²⁰ *Id.* at 9-10.

Even if, contrary to indications, the U.S. steel industry were to increase its production of semi-finished steel, any such increase would likely come from Electric-Arc Furnace steelmaking, which would have little or no impact on iron ore consumption.²¹

Given the high demand for semi-finished steel that the U.S. steel industry is not equipped to satisfy, and which Ispat Mexicana plays a major role in supplying, restrictions on U.S. imports of steel slab from Mexico would be detrimental to Ispat Mexicana's U.S. customers, whose operations rely on purchased slabs. Furthermore, such restrictions would lead to reduced finished steel output, raise steel production costs, and harm not only the U.S. steel industry but also other sectors of the economy reliant on steel, thus negatively impacting the U.S. economy as a whole.

Ispat Mexicana's Supply of Semi-Finished Steel to the U.S. Steel Industry is Dependable

While U.S. imports of semi-finished steel from Mexico play an important and beneficial role in the U.S. steel industry, the industry's reliance on Mexican imports poses no threat to U.S. national security due to the dependability of the Mexican supply. Several factors combine to make Ispat Mexicana a particularly reliable source of semi-finished steel for the U.S. market. First, Ispat Mexicana is devoted exclusively to the production and sale of steel slabs, so there is no chance it would divert them into its own finished steel facility. Second, one of the most obvious and significant factors assuring the reliability of the Mexican supply of slab to the United States is geography. In a time of war or other national security risk, the same transportation circumstances that make Ispat Mexicana an economical source of steel slab for U.S. steel manufacturers provide a secure and proximate supply-line which is resistant to disruption. It should be noted that ocean

²¹ See *infra*, at 11.

shipment from Ispat Mexicana at Lázaro Cárdenas to Los Angeles takes only four days, and approximately only ten days to New Orleans. In addition, recent changed conditions in Mexico argue against the flow of semi-finished steel being interrupted due to economic or political instability. Further, in recent years the United States and Mexico have developed much closer diplomatic and economic ties, exemplified by the recent meeting between President Bush and President Fox. Finally, and perhaps most important, is the trading relationship between the two countries embodied in NAFTA, which provides special treatment for products from Mexico in certain trade cases, such as a “safeguards” investigation, and appeals from administrative determinations in antidumping and countervailing duty proceedings. Such special treatment illustrates the unique importance of imports from Mexico to the U.S. economy, and steel slabs are no exception - in fact, they prove the point.

Each one of these factors enhances the reliability of Ispat Mexicana as a supplier of semi-finished steel slabs to the U.S. market.

U.S. Imports of Semi-finished Steel from Mexico Are not the Cause of the Relative Decline of the U.S. Iron Ore Industry

In their January 16, 2001 letter to the Department requesting this Section 232 investigation, Congressmen James L. Oberstar and Bart Stupak assert that U.S. imports of steel slabs are harming the U.S. iron ore industry. The Department has requested public comments on “the effects on the national security of imports of iron ore and semi-finished steel,”²² and we submit that a complete and proper analysis of such effects should include all segments of the steel industry, not just iron ore and semi-finished steel production, since, as noted earlier, national

²² Initiation of National Security Investigation of Imports of Iron Ore and Semi-Finished Steel, Department of Commerce, Bureau of Export Administration, 66 *Fed. Reg.* 9067.

security and economic welfare depend on the country's ability to produce primarily finished steel, the end product of the steelmaking process. We have calculated, from official year 2000 U.S. import statistics and American Iron and Steel Institute preliminary year 2000 shipment figures, that the percentage of semi-finished steel consumption accounted for by imported semi-finished steel (about 80% steel slabs) is only 7%, and only [%] by imports from Ispat Mexicana, clearly a *de minimis* amount, especially when compared with finished steel imports accounting for over 22% of U.S. consumption.

Although the importance of the U.S. iron ore industry may be declining relative to other segments of the steel industry, broad changes within the steel industry, rather than slab imports, are the cause. Probably the single major reason for the decline of the relative importance of iron ore to the U.S. steel industry as a whole is the relatively recent, dramatic and continuing rise in use of the Electric-Arc Furnace (EAF), which uses steel scrap as a significant portion of its raw material. For many years, production by the EAF production method employed by "mini-mills" has been growing relative to the blast furnace (BF) and blast oxygen furnace (BOF) production method used by integrated mills, and this trend is projected to continue as EAF steelmaking technology continues to improve.²³

By contrast with integrated steel mills, mini-mills using the EAF method require low levels of investment. Furthermore, the costs for mini-mills are variable with the cost of steel scrap, which is usually more than 50% of the total cost. Thus, mini-mills are better positioned to

²³ Peter F. Marcus, Karlis M. Kirsis, Peter J. Kakela, World Steel Dynamics, "North American Iron Ore Industry: Globalization and Competitive Response," December 2000 (*hereinafter* "WSD--'N.A. Iron Ore Industry'"), at 1-17.

survive economic downturns because the price of steel scrap reflects economic conditions. In addition, scrap recycling conserves energy as well as steel itself, while also forestalling the accumulation of abandoned steel products and reducing the burden on landfill disposal facilities. The costs associated with compliance with environmental regulations, noted above, constitute another advantage for mini-mills as compared to integrated mills.

Already, EAF production accounts for nearly one-half of U.S. raw steel production, and the leading mini-mill producer, Nucor Corp., is likely to soon overtake USX Corp. as the top U.S. steel producer.²⁴ In the five-year period from 1995 through 2000 alone, shipments by EAF flat-rolling mills rose from 3 million tons to 12 million tons.²⁵

Other deep-rooted considerations help to explain why the U.S. iron ore market is not stronger than it is at present. The United States simply does not have the capacity to produce the lowest cost and highest quality iron ore in the world. One important reason is that most iron ore manufacturers in the United States must engage in higher cost processes to obtain quality iron ore than manufacturers in other nations with higher grade natural ore, such as a number of South American competitors. U.S. ores, while suitable for blast furnace use, generally do not meet the quality specifications to make suitable low gangue Direct Reduction grade pellets. Thus, while U.S. production of iron ore may involve separating the 22-30% iron mineral content from rock to produce a 66-68% iron concentrate, followed by additional steps such as bailing and pelletizing,

²⁴ Robert E. Mazurak, Cleveland-Cliffs Inc., "Market-Driven Adaptive Changes at Cleveland-Cliffs Inc." (presented at Intertech's 5th Iron Ore Business Development Forum--Iron Ore World, Chicago, Illinois, October 9-11, 2000), at 3-4.

²⁵ WSD - "N.A. Iron Ore Industry," at 1-19.

competitors in South American may only need to crush and screen ore to derive a saleable product.²⁶

Moreover, the U.S. iron ore industry has only 3 million long tons of unused effective capacity and therefore lacks the resources to eliminate the need for imports by increasing domestic production. Indeed, in the 1990s, the U.S. iron ore industry has been reduced in scale to the point where it is now essentially supplying only the steel industry's base load iron ore requirements.

In seeking to improve its position, the U.S. iron ore industry faces a number of other obstacles. U.S. iron ore producers are capital-starved, due in part to the fact that some iron ore mines are kept operational because that is less costly than closing them.²⁷ Furthermore, mining conditions are difficult to improve due to the huge capital investment required to enhance iron recovery rates.²⁸ It is even more difficult to improve stripping ratios, since pits get deeper with advanced mining of particular deposits.²⁹

Nevertheless, a relatively declining U.S. iron ore industry should not be not cause for alarm. First, Cleveland-Cliffs Inc. manages six U.S. mines and is the world's largest iron ore pellet producer, responsible for nearly half of North America's iron ore pellet capacity.³⁰ It has shown a willingness and an ability to adapt to the changing conditions in the iron ore industry. Second, certain closed but "mothballed" U.S. pellet production facilities could be brought into

²⁶ Mazurak, at 1

²⁷ WSD - "N.A. Iron Ore Industry," at 1-7.

²⁸ *Id.* at 1-49.

²⁹ *Id.*

³⁰ Mazurak, at 2

production in the future if and when necessary. “Mothballed” capacity may be divided into “swing capacity,” which has been operated on over the past two decades and can be reactivated in three months or less, and “poised capacity,” which has received only limited maintenance and could be reactivated in six to sixteen months. It has been estimated that the United States has a swing capacity of 4 million long tons per year and a poised capacity of 11 million long tons per year.³¹

Since the cause of the U.S. iron ore industry’s relative decline does not lie in U.S. imports of steel slabs from Mexico, restrictions on such imports would not be an effective means of improving the health of the U.S. iron ore industry. Rather than restricting the reliable supply of a resource vital to the U.S. steel industry, attempts to bolster the U.S. iron ore industry would be better focused on technological developments aimed at improving the quality and reducing the cost of production techniques employed by the U.S. iron ore industry, many of which date back to the 1960s, when the industry more than doubled in size.³² A number of potentially beneficial improvements have been suggested by objective and informed observers of the U.S. steel industry.³³

Conclusion

On behalf of Ispat Mexicana, for the reasons discussed herein, we urge the Department to find that U.S. imports of semi-finished steel slabs from Mexico pose no threat to U.S. national security. If the Department should find otherwise, we urge the Department to recommend against

³¹ WSD - “N.A. Iron Ore Industry” at 1-21.

³² *Id.* at 1-51.

³³ *Id.* at 1-51 - 1-52.

any presidential action that would impose import restrictions because any restrictions on semi-finished steel slab imports would be harmful to the U.S. economy.